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APFW

**PETITION TO REVIVE UNINTENTIONALLY
ABANDONED APPLICATION FOR PATENT
PURSUANT TO 37 C.F.R. § 1.137(b)**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mitchell et al.

Serial No. 10/614,940

Filed: July 7, 2003

For: Oral Rehydration Compositions Containing Liposomes¹

Group Art Unit:1645

04/27/2006 KARMEI 00000014 10614940
02 FC:2453 750.00 UP

Commissioner of Patents and Trademarks
PO Box 1450
Alexandria, VA 22313-1450

04/27/2006 KARMEI 00000014 10614940
02 FC:1464 130.00 UP

**PETITION TO REVIVE ABANDONED APPLICATION UNDER THE PROVISIONS OF
37 C.F.R. §§ 1.137(b), 1.181 (a)(3), 1.182, AND 1.183**

Dear Sir:

Pursuant to 37 C.F.R. §§ 1.181, 1.182, and 1.183, the inventors Mitchell et al., through the undersigned, files this petition to the Director invoking the supervisory authority of the Director in appropriate circumstances. 37 C.F.R. § 1.181 (a) (3). The instant situation, described below, is not specifically provided for in the regulations and should be decided in accordance with the merits of the situation by or under the authority of the Director. 37 C.F.R. § 1.182. Since the present situation is an extraordinary situation, one where justice requires that requirements of the regulations that are not requirements of the statutes be suspended or waived, the inventors petition the Commissioner of Patents and Trademarks to suspend the rule regarding express abandonment and revive the instant patent application. 37 C.F.R. § 1.183.

Accordingly, the Inventor's attorney respectfully petitions the Commissioner of Patents and Trademarks to revive the above-identified application under the provisions of 37 C.F.R. § 1.137 on the ground that, as to the inventors, Cheryl R. Mitchell and James B. Mitchell, parties holding the true interest in the above application, the abandonment of the above-identified application was completely unintentional and without their authorization. This petition is supported by the affidavits of Cheryl R. Mitchell and James B. Mitchell.

A power of attorney naming the undersigned was filed simultaneously with the original application on July 7, 2003. The application was subsequently conditionally assigned to Phlo System, Inc., said assignment was recorded on February 24, 2005. A second power of attorney, naming David Gass of Marshall, Gerstein & Borun LLP was filed on March 7, 2005. This second power of attorney did not revoke the previously filed power of attorney. On January 6, 2006, David Gass of Marshall, Gerstein & Borun LLP filed a request to withdraw as attorney; said request was expressly permitted by the conditional assignee. As

of this date, the undersigned remains an attorney of record for this application and, acting on behalf of the inventors and the true owners of the application, herein files this petition.

The facts underlying this matter are: On November 15, 2001, the inventors, working for the entity Creative Research Management Inc. (“CRM”), entered into an agreement with Advanced Bio-Delivery LLC (“ABD”) and Phlo System, Inc. (“PSI”). CRM, among other things, operates a contract research and development facility with some manufacturing capabilities. In or about 2001, CRM, ABD, and PSI began discussions regarding the licensing of certain technology to ABD and PSI. On or about August 2002, the parties entered into an Alliance Agreement dated November 15, 2001.

Pursuant to this Alliance Agreement, CRM conditionally assigned patent application 10/614,940, Oral Rehydration Composition Containing Liposomes, along with additional other intellectual property. In return for CRM’s services and Intellectual Property, CRM was to receive a 15% interest in ABD and was to receive Minimum Distributions equal to the greater of 3% of ABD’s operating profit or the following dollar amounts: for calendar year 2002, CRM was to receive \$200,000; for 2003, and thereafter, CRM was to receive \$300,000. Subsequently, CRM, ABD and PSI entered into a Memorandum of Understanding, dated September 9, 2003, for the purpose of allocating portions of the Minimum Distributions for accounting purposes. Under this Memorandum of Understanding, CRM is entitled to a Termination Amount of at least \$532,784, less Minimum Distributions previously made to CRM. On February 25, 2005, ABD and PSI delivered to CRM a purported Notice of Termination of Alliance Agreement (“Notice of Termination”) premised on a false contention that CRM failed to deliver the required intellectual property. The Notice of Termination purports to terminate both the Alliance Agreement and CRM’s 15% interest in ABD.

ABD and PSI are currently in default of the Alliance Agreement, at least, by failing to make the Minimum Distributions and by failing to provide financial and tax information, as required; specifically, ABD and PSI have failed to make the Minimum Distribution for 2003, made only \$100,000 of the \$300,000 Minimum Distribution for 2004, failed to make the prorated \$300,000 Minimum Distribution for 2005, and failed to provide an accounting for 2002, 2003, 2004 and 2005.

On March 25, 2005, CRM filed suit in the Court of Chancery of the State of Delaware in and for New Castle County; Creative Research Manufacturing v. Advanced Bio-Delivery LLC and Phlo System, Inc., Del.Ch., C.A. No. 1211-N-VC Parsons (the “Delaware Litigation”); seeking, among other things, the return of title for patent application 10/614,940. The Delaware Litigation remains pending. It was during the course of this litigation that PSI, by its president, James Hovis, improperly filed a purported express abandonment of the instant application.

While it is appreciated that the above application was expressly abandoned by the conditional assignee, PSI, on February 6, 2006, this abandonment has only just now come to light to the inventors and was during the pendency of litigation between the inventors, by and through CRM, and PSI and ABD over title to the application. This wrongful abandonment of the instant application is prejudicial to the true

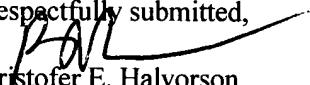
owners of the application, was done without notice to the Court in the Delaware Litigation and should not have been entered since PSI has a duty of truthfulness and candor to the United States Patent and Trademark Office. Immediately upon the realization of the situation, the undersigned was requested by the inventors to immediately prepare this petition to revive the instant application and formal affidavits for execution by Cheryl R. Mitchell and James B. Mitchell and thereafter expeditiously filed that petition and those affidavits.

It is submitted, therefore, that on the basis described above, the abandonment should be held to be inadvertent as to the true owners, as it was not submitted by the true owners of the instant application and was submitted without notice to the Court in the Delaware Litigation. Consequently, the finding of abandonment should be reversed and the case revived.

The petition fee in the sum required under 37 C.F.R. § 1.17(h) and (m) is enclosed herewith.

Date: 4/24/06

Respectfully submitted,


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